

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

CIVIL NO. 1:18-CV-00236-CSM

SOPHIA WILANSKY,)
)
Plaintiff,)
)
vs.)
)
MORTON COUNTY, NORTH DAKOTA;)
KYLE KIRCHMEIER in his official)
capacity; ADAM J. DVORAK, in his)
personal capacity; and JONATHAN R.)
MOLL, in his personal capacity,)
)
Defendants.)

**COUNTY DEFENDANTS' MOTION TO
DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT**

*** *** ***

Pursuant to Rule 7.1(A) of the Local Rules of the United States District Court for the District of North Dakota and Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Morton County, Kyle Kirchmeier, and Jonathan R. Moll (hereinafter collectively “County Defendants”) request Plaintiff’s First Amended Complaint (doc. 153) be dismissed, in its entirety, with prejudice.

This motion is based upon all of the files, records, and proceedings herein, including, among other things, the memorandum of law submitted in support of this motion. Plaintiff’s pleadings, in light of the materials which the Court is permitted to consider in relation to this motion to dismiss, establish Plaintiff has failed to plead a plausible claim against Defendants, and individual government Defendants are entitled to qualified immunity, as a matter of law. Plaintiff has failed to allege a violation of her Fourth Amendment rights as she has not alleged facts to establish either Moll or Dvorak “seized” her in the context of the Fourth Amendment. Even assuming, arguendo, facts establishing a “seizure” have been alleged, Defendants Moll and Dvorak

are entitled to qualified immunity. In addition, Plaintiff's state law claims against Defendants Moll and Dvorak are time-barred. As Plaintiff's state law claims against Morton County are derivative of her claims against Moll and Dvorak, those claims should be dismissed as well. All Defendants are also immune from Plaintiff's state law claims under the North Dakota Disaster Act of 1985 and pursuant to N.D.C.C. § 12.1-05-07.2. County Defendants are also immune to Plaintiff's state law claims under North Dakota's public duty doctrine. Further, State Defendant Dvorak is entitled to Eleventh Amendment immunity in relation to Plaintiff's state law claims. Finally, Plaintiff's Intentional Infliction of Emotional Distress Claim should also be dismissed as Plaintiff has not alleged Defendants Moll or Dvorak engaged in extreme and outrageous conduct.

Dated this 25th day of August, 2023.

BAKKE GRINOLDS WIEDERHOLT

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CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2023, a true and correct copy of the foregoing **COUNTY DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT** was filed electronically with the Clerk of Court through ECF.

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